

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 922

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
AMENDING THE DRINKING WATER STATE REVOLVING LOAN FUND ACT;  
EXPANDING THE DEFINITION OF FINANCIAL ASSISTANCE; DECLARING AN  
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-21A-3 NMSA 1978 (being Laws 1997,  
Chapter 144, Section 3, as amended) is amended to read:

"6-21A-3. DEFINITIONS.--As used in the Drinking Water  
State Revolving Loan Fund Act:

A. "authority" means the New Mexico finance  
authority;

B. "department" means the department of  
environment;

C. "drinking water facility construction project"

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underscored material = new  
[bracketed material] = delete

1 means the acquisition, design, construction, improvement,  
2 expansion, repair or rehabilitation of all or part of any  
3 structure, facility or equipment necessary for a drinking water  
4 system or water supply system;

5 D. "drinking water supply facility" means any  
6 structure, facility or equipment necessary for a drinking water  
7 system or water supply system;

8 E. "financial assistance" means loans; loan  
9 subsidies as permitted by law, including principal forgiveness;  
10 the purchase or refinancing of debt obligation of a local  
11 authority at an interest rate that is less than or equal to the  
12 market interest rate in any case in which a debt obligation is  
13 incurred after July 1, 1993; loan guarantees; bond insurance;  
14 or security for revenue bonds issued by the authority;

15 F. "fund" means the drinking water state revolving  
16 loan fund;

17 G. "local authority" means any municipality,  
18 county, incorporated county, sanitation district, water and  
19 sanitation district or any similar district, public or private  
20 water cooperative or association or any similar organization,  
21 public or private community water system or nonprofit  
22 noncommunity water system or any other agency created pursuant  
23 to a joint powers agreement acting on behalf of any entity  
24 listed in this subsection with a publicly owned drinking water  
25 system or water supply system that qualifies as a community

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1 water system or nonprofit noncommunity system as defined by the  
2 Safe Drinking Water Act. "Local authority" does not include  
3 systems owned by federal agencies;

4 H. "operate and maintain" means to perform all  
5 necessary activities, including the replacement of equipment or  
6 appurtenances, to assure the dependable and economical function  
7 of a drinking water facility in accordance with its intended  
8 purpose; and

9 I. "Safe Drinking Water Act" means the federal Safe  
10 Drinking Water Act as amended in 1996 and its subsequent  
11 amendments or successor provisions."

12 Section 2. Section 6-21A-4 NMSA 1978 (being Laws 1997,  
13 Chapter 144, Section 4, as amended) is amended to read:

14 "6-21A-4. FUND CREATED--ADMINISTRATION.--

15 A. There is created in the authority a revolving  
16 loan fund to be known as the "drinking water state revolving  
17 loan fund", which shall be administered by the authority. The  
18 authority is authorized to establish procedures required to  
19 administer the fund in accordance with the Safe Drinking Water  
20 Act and state laws. The authority and the department shall,  
21 whenever possible, coordinate application procedures and  
22 funding cycles with the New Mexico Community Assistance Act.

23 B. The following shall be deposited directly in the  
24 fund:

25 (1) grants from the federal government or its

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underscored material = new  
[bracketed material] = delete

1 agencies allotted to the state for capitalization of the fund;

2 (2) funds as appropriated by the legislature  
3 to implement the provisions of the Drinking Water State  
4 Revolving Loan Fund Act or to provide state matching funds that  
5 are required by the terms of any federal grant under the Safe  
6 Drinking Water Act;

7 (3) loan principal, interest and penalty  
8 payments if required by the terms of any federal grant under  
9 the Safe Drinking Water Act;

10 (4) any other public or private money  
11 dedicated to the fund; and

12 (5) revenue transferred from other state  
13 revolving funds.

14 C. Money in the fund is appropriated for  
15 expenditure by the authority in a manner consistent with the  
16 terms and conditions of the federal capitalization grants and  
17 the Safe Drinking Water Act and may be used:

18 (1) to provide loans and loan subsidies as  
19 permitted by law, including principal forgiveness, for the  
20 construction or rehabilitation of drinking water facilities;

21 (2) to buy or refinance the debt obligation of  
22 a local authority at an interest rate that is less than or  
23 equal to the market interest rate in any case in which a debt  
24 obligation is incurred after July 1, 1993;

25 (3) to guarantee or purchase insurance for

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1 obligations of local authorities to improve credit market  
2 access or reduce interest rates;

3 (4) to provide loan guarantees for similar  
4 revolving funds established by local authorities; and

5 (5) to provide a source of revenue or security  
6 for the repayment of principal and interest on bonds issued by  
7 the authority if the proceeds of the bonds are deposited in the  
8 fund or if the proceeds of the bonds are used to make loans to  
9 local authorities to the extent provided in the terms of the  
10 federal grant.

11 D. If needed to cover administrative expenses,  
12 pursuant to procedures established by the authority, the  
13 authority may impose and collect a fee from each local  
14 authority that receives financial assistance from the fund,  
15 which fee shall be used solely for the costs of administering  
16 the fund and which fee shall be kept outside the fund.

17 E. Money not currently needed for the operation of  
18 the fund or otherwise dedicated may be invested pursuant to the  
19 New Mexico Finance Authority Act, and all interest earned on  
20 such investments shall be credited to the fund. Money  
21 remaining in the fund at the end of the fiscal year shall not  
22 revert to the general fund but shall accrue to the credit of  
23 the fund.

24 F. The authority shall maintain full authority for  
25 the operation of the fund in accordance with applicable federal

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1 and state law, including, in cooperation with the department,  
2 ensuring the loan recipients are on the state priority list or  
3 otherwise satisfy the Safe Drinking Water Act requirements.

4 G. The authority shall establish fiscal controls  
5 and accounting procedures that are sufficient to assure proper  
6 accounting for fund payments, disbursements and balances and  
7 shall provide, in cooperation with the department, a biannual  
8 report and an annual independent audit on the fund to the  
9 governor and to the United States environmental protection  
10 agency as required by the Safe Drinking Water Act."

11 Section 3. Section 6-21A-6 NMSA 1978 (being Laws 1997,  
12 Chapter 144, Section 6) is amended to read:

13 "6-21A-6. FINANCIAL ASSISTANCE--CRITERIA.--

14 A. Financial assistance shall be provided only to  
15 local authorities that:

16 (1) meet the requirements for financial  
17 capability set by the authority to assure sufficient revenues  
18 to operate and maintain the drinking water facility for its  
19 useful life and to repay the financial assistance to the extent  
20 required by state law, the Safe Drinking Water Act and the  
21 terms of the loan;

22 (2) appear on the priority list for the fund,  
23 developed and maintained by the department, regardless of rank  
24 on such list;

25 (3) are considered by the authority and the

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1 department ready to proceed with the project;

2 (4) demonstrate adequate technical and  
3 managerial capability to operate the drinking water facility  
4 for its useful life; and

5 (5) meet other requirements established by the  
6 authority and state laws, including but not limited to  
7 procurement, recordkeeping and accounting.

8 B. Loans from the fund shall be made by the  
9 authority only to local authorities that establish one or more  
10 dedicated sources of revenue to repay the money received from  
11 the fund, to the extent that repayment is required by state  
12 laws, the Safe Water Drinking Act and the terms of the loan,  
13 and to provide for operation, maintenance and equipment  
14 replacement expenses of the drinking water facility proposed  
15 for funding.

16 C. The authority, with assistance from the  
17 department, shall establish procedures addressing methods to  
18 provide financial assistance to local authorities in accordance  
19 with the criteria set forth in the Safe Drinking Water Act,  
20 Section 1452 (a) (3).

21 D. Each loan made by the authority shall provide  
22 that repayment of the loan, to the extent repayment is  
23 required, shall begin not later than one year after completion  
24 of construction of the drinking water facility for which the  
25 loan was made and the loan, or the portion of the loan required

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1 to be repaid, shall be repaid in full no later than twenty  
2 years after completion of the construction, except in the case  
3 of a disadvantaged community, in which case the authority may  
4 extend the term of the loan as long as the extended term:

5 (1) terminates not later than the date that is  
6 thirty years after the date of project completion; and

7 (2) does not exceed the expected design life  
8 of the project.

9 E. Financial assistance may be made with an annual  
10 interest rate [~~which~~] that is less than a market rate as  
11 determined by procedures established by the authority and  
12 reported annually in the intended use plan prepared by the  
13 department, with the assistance of the authority.

14 F. Financial assistance pursuant to the Drinking  
15 Water State Revolving Loan Fund Act shall not be given to a  
16 local authority if the authority determines that the financial  
17 assistance is for a drinking water facility to be constructed  
18 in fulfillment or partial fulfillment of requirements made of a  
19 subdivider under the provisions of the Land Subdivision Act or  
20 the New Mexico Subdivision Act.

21 G. Financial assistance may be made to local  
22 authorities that employ or contract with a registered  
23 professional engineer to provide and be responsible for  
24 engineering services on the drinking water facility. Such  
25 services, if the authority determines such services are needed,

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1 may include but are not limited to an engineering report,  
2 facility plans, environmental evaluations, construction  
3 contract documents, supervision of construction and start-up  
4 services.

5 H. Financial assistance shall be made only for  
6 eligible items as described by authority procedures and as  
7 identified pursuant to the Safe Drinking Water Act.

8 I. Notwithstanding any other provision of the  
9 Drinking Water State Revolving Loan Fund Act, financial  
10 assistance from the fund may be made to local authorities in  
11 accordance with applicable provisions of federal laws and  
12 regulations governing the use of funds derived from capitalized  
13 grants and other federal funding sources, including funds made  
14 available under the Safe Water Drinking Act, the federal  
15 American Recovery and Reinvestment Act of 2009 and any other  
16 federal law pursuant to which money is provided to the fund."

17 Section 4. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect immediately.

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